IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5522 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MUKTIKAMAL KESARCHANDRA SURISHWARJI, JAIN VIDHYAPITH

Versus

CHARITY COMMISSIONER GUJARAT STATE

Appearance:

1. Special Civil Application No. 5522 of 2002

Mr.Y.N.Oza, Sr.Counsel with MR BP GUPTA for Petitioner No. 1

Ms.Harsha Devani, AGP for Respondent No. 1

MR JV MEHTA for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 03/07/2002

ORAL JUDGEMENT

Rule. Ms.Harsha Devani, Ld.AGP appears and waives service of rule on behalf of respondent No.1. Mr.J.V.Mehta appears for respondent No.2 and waives service of notice. With the consent of parties matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner against the order, dated 6.6.02 passed by the Joint Charity Commissioner in Suo Motu Misc.Application No.12/01 whereby various directions are given as narrated in Item Nos 1 to 5 of the order.

3. Mr.Y.N.Oza, Ld.Sr.Counsel appearing with Mr.Gupta for the petitioner submitted that the Charity Commissioner has no power under section 41 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the Act") to pass such order. In furtherance to his submission, he also submitted that one barber who is residing at Kheda and not the disciple of Jain philosophy has submitted the application and that application is treated as suo moto application by the Charity Commissioner and the power has been exercised. Mr.Oza also submitted that there are serious allegations against the respondent No.2 who is supposed to discharge his pious obligation as per the Jain philosophy, but he is not doing so and as a result thereof there are large number of Jain disciples who are not only against respondent No.2 but they have lost faith in him. Mr.Oza submitted that since last five years, i.e. from 1997 onwards he was not even allowed to stay in Muktidham Upasray, however, on account of order dated 6.6.02, which is challenged in this petition, the respondent No.2 with police aid and assistance got himself inducted in the Upasray and he is staying there. Mr.Oza submitted that under any circumstances there can not be any power with the Charity Commissioner to pass such an interim injunction like that of Civil Court and that too under the socalled exercise of power under section 41-A of the Act. Mr.Oza submitted that as such the petitioners are not agreeable even for the presence of the respondent No.2, but with a view to take a reasonable approach the petitioners would allow the respondent No.2 to stay upto completion of Chatur Mas, i.e. upto next Kartik Punam and he submitted that so far as the direction Nos 2 to 5 are concerned, there is no serious objection, but so far as direction No.1 is concerned, with a view to have transparent administration of the trust the petitioners have no objection if the direction No.1 is substituted by observing that one representative/nominee of the respondent No.2 will be allowed to participate in the administration of the trust. Mr.Oza submitted that with a view to show the bonafides of the present trustees, the petitioner-trust has no objection if appropriate conditions are put by this court for smooth and transparent administration of the trust, but he submitted that the stand is without prejudice to the contention of

the petitioners that there is no power to pass such order with the Charity Commissioner under section 41-A of the Act.

4. On behalf of respondent No.2, Mr.Mehta submitted that the allegations of personal character made against the respondent No.2 are baseless and he submitted that, as a matter of fact, the trustees of the trust are eager to see that the funds of the trust are managed in the manner they like and he further submitted that in past also it is found by the Charity Commissioner that the trustees have not properly managed the funds of the trust and Mr.Mehta submitted that as per the trust deed the trustees ought to have got prior approval of the respondent No.2 for incurring any expenses from the funds of the trust and he submitted that the respondent No.2 has made huge efforts for creation of fund of the trust and thereafter the trustees want to use the fund for their own benefit or rather against the interest of the trust and therefore Mr.Mehta submitted that the Charity Commissioner has rightly exercised the power. Mr.Mehta also submitted that before the Charity Commissioner the trustees of the petitioner trust have failed to produce any evidence and therefore the Charity Commissioner has rightly passed the order. Mr.Mehta also submitted that when the matter is still pending before the Charity Commissioner vide application No.3/01 for the purpose of passing the final order the interim order passed by the Charity Commissioner herein to protect the interest of the members can not be said to be unreasonable and arbitrary. However, Mr.Mehta fairly submitted that the respondent No.2 being abided by the philosophy of Jainism he is not interested in sticking to particular place. Since Chatur Mas is just to begin he should be allowed to stay only until the expiry of Chatur Mas, i.e. upto next Kartik Punam and thereafter of his own he shall vacate the place in question. Mr.Mehta submitted that if the court finds reasonable, the direction No.1 so far it relates getting prior approval be modified by allowing Kaushik Narottamdas Shah to participate in the administration of the trust. Therefore Mr.Mehta submitted that when the matter is still pending before the Charity Commissioner, appropriate direction may be given to the Charity Commissioner to decide the matter and this court may not interfere at this stage while exercising constitutional powers.

5. Considering the above submissions made by both sides, and keeping in view that the petitioner trust is

connected with the sentiments of large number of people, I shall consider the case for the purpose appropriate direction subsequently, but it would be necessary to make primafacie observations on the exercise of powers by the Charity Commissioner at this stage. Section 41-A of the Act is interpreted by this court number of times and there are reported judgments also. The scope and ambit of power under section 41-A of the Act is by way of precautionary measure and more particularly when there is imminent danger of utilisation of property against the interest of the trust. In any event, the powers are like that of interim measure and it can not be read to take away the regular administration of the trust. Primafacie, I feel that when the Charity Commissioner has exercised the statutory power upon an application of a person who is not even residing in Ahmedabad and it is doubted that whether he is follower of Jainism, the Charity Commissioner, in all fairness, after initiating the suo motu proceedings ought to have transferred the matter to another Joint Charity Commissioner for considering the matter. Be that as it it, it is still a doubtful proposition as to whether the Charity Commissioner could grant the injunction in exercise of powers under section 41-A of the Act so as to prohibit any person from entering into the premises or so as to allow the entry of any person into the premises of the trust. I find that it is not required at this stage to finally adjudicate upon these questions since the matter is at large pending before the Charity Commissioner and since both sides have come out with reasonable stand. In view of the fact that religious sentiments of large number of people are involved in this trust, and in view of the fact that counsel of both sides have taken fair stand, I feel the following directions would meet with the ends of justice:

(i) The direction Nos 2,3,4 & 5 shall continue to operate and appropriate report shall be submitted to the Charity Commissioner as mentioned in the directions.

(ii) So far as direction No.1 is concerned, same shall remain stayed with clarification and upon the concession that the respondent No.2 shall be allowed to occupy two rooms and will be allowed to offer prayers in Upasray upto the expiry of Chatur Mas i.e. upto next Kartik Punam, and thereafter, the respondent No.2 of his own shall leave the premises of Upasraya and vacate the rooms too.

(iii) It is clarified that the administration of the trust for running their day to day affairs etc shall be conducted only by the approval of the meeting of the trustees and at the said meeting one representative of the respondent No.2, namely, Kaushik Narottamdas Shah, who is described as Income Tax Practitioner, residing at: A/2, Mahavir Apartments, behind Jainnagar, Ahmedabad shall be allowed to attend the meeting of the trustees and he shall also be allowed to make deliberations at the meeting. If the aforesaid nominee of the respondent No.2 finds that the management of the trust is not being properly conducted by the trustees, he shall intimate the same in writing to the Charity Commissioner and his objections shall also be noted in the proceedings of the meeting. Upon such intimation or objection the Charity Commissioner will be at liberty to pass appropriate orders in accordance with law.

(iv) It is further directed that if the petitioner trust is required to incur expenses exceeding Rs.25,000/- specific intimation will be given to Charity Commissioner and the Charity Commissioner will be at liberty to call for further details and to pass further appropriate orders in accordance with law.

(v) Since the suo motu powers are exercised by the Joint Charity Commissioner,Shri Antani the proceedings of Application No.3/01 upon the change report shall be heard and decided by any other Joint Charity Charity Commissioner other than Shri Antani who had exercised powers and initiated suo motu proceedings. This direction is given with a view to see that faith is maintained in the proceedings and there is nothing against Shri Antani. The concerned Joint Charity Commissioner as indicated above shall take decision as early as possible upon the change report proceedings being Application No.3/01 preferably within three months from the date of receipt of writ of this court.

6. The petition stands allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

3.7.02 (JAYANT PATEL,J)